Office-Supreme Court, U.S.
FILED
JAN 7 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1964

No. [redacted] 813

EDYTHE RICE DYER, Petitioner

v.

EDWARD P. MURRAY, as successor trustee under the Will of the late JOHN CASSIDY, JANE MURPHY SULLIVAN, JOHN CASSIDY, BARBARA ANN CASSIDY, ROSELLE MARIE CASSIDY FLYNN, and JOAN CASSIDY STETSON, Respondents.

Petition for writ of certiorari:

~~or~~

~~MOTION for leave to file petition for rehearing.~~

EDYTHE RICE DYER
Petitioner pro se
61 State Street
Bangor, Maine
November 5, 1964

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 533

EDYTHE RICE DYER, Petitioner

v.

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MOTION

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respectfully represents the above named Edythe Rice Dyer of Hampden, County of Penobscot, State of Maine as follows:

That she is one of the defendants in the case of Edward P. Murray v. Jane Murphy Sullivan (179A 2nd 307) (158 Me. 98) (Docket #533 October term U.S. Supreme Court)

That NO unconstitutional issues existed in this case until they were created by the SUPREME JUDICIAL COURT OF MAINE, — ITSELF.

Your petitioner prays, that a Writ of Certiorari or leave to file a professional petition be allowed, to review the judgement and action of the Supreme Judicial Court of Maine, — entered into on March 23, 1962, — which is WRONG and unconstitutional. (AB INITIO) — (as provided by the laws of Maine, for the distribution of UNDISTRIBUTED testate property, — which is INTESTATE property — AB INITIO)

Your petitioner has continuously petitioned, appealed and accepted denials under protest. There is now no other recourse than to pray for the help and guidance of the Supreme Court of the United States.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC 1257 (3) conferring jurisdiction on this Court over final Judgements or decrees rendered by the highest court of the State of Maine, when claimed under the U.S. Constitution.

It is my understanding that the Supreme Court of the U.S., if it so wishes, may waive its own rules.

IF my constitutional rights have been violated, it follows (as the night, the day) that the decision of the Maine Court is VOID, — from the beginning, — and will not improve with time.

Because the decision rendered by the Maine Law Court in this case IS and always has been, unconstitutional — and I have constantly protested, even the partial distribution of the estate (now being distributed). I ask the court only for a fair opportunity to obtain the equitable justice required to resolve your petitioners truthful complaint.

QUESTIONS PRESENTED

Did the Maine Law Court, artificially and fictitiously (in effect) advance the date of the TESTATOR'S death from March 25, 1918, to June 9, 1961?

Did the Maine Court capriciously deprive me of my property rights inherent in my grandfather's Will, as provided by the whole standard meaning of the laws of the State of Maine, and the United States? Did the Maine Court refuse to apply the Maine Descent Statute — same as it would be applied to any other citizen's PREVIOUSLY UNDISTRIBUTED — Remaining ESTATE.

Has the Maine Law Court, ITSELF, construed Mr. Cassidy's will, in such a way that he was at times both TESTATE AND INTESTATE? (He could not be both). Has the court unconstitutionally "severed" and "omitted" parts of the Maine Legislature's whole descent statute, in order to arrive at its decision? Did the court's dual and fictitious assumptions in effect, rewrite and reversed the ONLY — natural "manner and proportions" which the Laws of Maine provide for any or all Maine citizens? Erroneously and unconstitutionally, did the court discriminate and deprive me of my rights to property, and the EQUAL protection of the laws of Maine in the same

manner and proportions provided for undistributed remainders. Indeed, has it ingeniously exerted itself to wreck the meaning and mandate of the Maine Legislature's descent statute, with a "fictitious death date" foreign to "Public Policy", — by not yielding to established law? (Church v Fairbanks 124 Me. 188) (126A. 823)

IN BRIEF

Did this TESTATOR (with clear plan and intent) — specifically direct his TRUSTEES — (43 years after his death) to "then" finally distribute the undistributed remainder of his estate, — to his "then" remaining LINE descendants?

Was the clear intent of the WILL "synonymous" with the SAME and ONLY manner and proportions, "then" provided by the LAWS of Maine — for his property NOT distributed at the (true) TIME of HIS DEATH?

Does the will confirm HOW his TRUSTEES were to "then" distribute his estate?

(Quote the Will):

> "*. . . . in the same manner and in the same proportions as shall then be provided by the then existing laws of the State of Maine, for the descent among lineal descendants of intestate property, real and personal.*" (no widow)

In effect, did the testator request his trustees to DO "exactly what the LAWS of Maine WOULD HAVE DONE with his "undistributed" estate; — IF HE HAD NOT requested the SAME treatment in a "testate" manner?"

If the testators INTENTION is "synonymous" with the Maine Legislature's Laws of Maine; WHY was it necessary for the Maine Law Court, — to do "artificially construction" on this testators INTENTION — "AS THOUGH" he DIED (43) years after his TRUE death date?

The "REMAINDER, of which he died seized" — which he died seized" — which is referred to in the Maine descent statute; IS CLEARLY, that part of any estate which is INTESTATE as of the date of death?

1. if a Maine citizen's estate is not disposed of by a legal will.

2. if it is not (ALL) disposed of by a will, AND that UNDISPOSED of portion in a will is just as INTESTATE (as of the date of his death) AS THOUGH NO WILL was ever written.

How could the Maine Court, NOT follow the SAME established Maine statutory and case law, which provides for "any" Maine citizen who did NOT DISPOSE of all of his property — as of the date of HIS DEATH, — which Mr. Cassidy INTENDED for his TRUSTEES to DO?

How can the Maine Law Court constitutionally re-write a will, — which does not need "reconstruction?"

STATEMENT OF THE CASE

THE FACTS as stated in the "Record" of this case, now before the Supreme Court of the United States, (docket #533) — will show: This case is not necessarily between the respondents. It primarily concerns the Maine Law Court, — which construed "fiction" into "facts", and thus applied the Maine Descent Statute, unconstitutionally.

1. AS THOUGH, a "testator" died "intestate" — (43) years after his actual death date. (Maine law provides no such "special privilege".)

2. AS THOUGH, this man was NOT survived by his children or the "issue" of his predeceased child. (The ONLY basis on which Maine intestate law can be applied, does not provide for their OMISSION).

3. AS THOUGH, my grandfather was survived by (2) separate sets of lineal descendants. (Testate or Intestate — No such provision is possible under the laws of Maine).

The SAME WORDS, in the 1961 statute, are for all practical purposes — "written into", and form a part of his WILL, which can only "speak" from the date of his death. (As a Testate estate MUST). (Same as undistributed property; which is REALLY INTESTATE property ab-initio)

APPARENTLY, the Maine Law Court has assumed that the estate vested for the first time, "only" in Mr. Cassidy's lineal descendants who were then living on June 9, 1961. — as a "class" — as though he "then" died.

AND THEN the Maine descent statute was applied to this assumption, — by the Court.

1. AS THOUGH, — grandfather "then" died intestate, (43) years after his actual death date.
2. AS THOUGH, his "then" living lineal descendants (when he did not die) were ALL of his lineal descendants (when he did die).
3. AS THOUGH, he had two separate sets of (testate) and (intestate) lineal descendants.
   a. the class of life estate descendants; and
   b. the class of surviving descendants — and that the provisions in the will and the statute — could and would — provide a basis for each class — on the premise of (2) different DEATH DATES at (2) different times.
4. AS THOUGH, a will, and the descent statute "could or would" — "speak" or provide for his descendants — (as though) the testator died at two different times. Your petitioner protests this line of thought.

(*Please Note*) However, "the right way is the best way!" If the Court had said his estate was (then in 1961) to be distributed (as though) it was previously undistributed property — and the remainder was intestate, that would have provided a per-stirpes distribution — as per the will.

(*Please Note*) If the Court had truthfully said (as though) his lineal descendants (on June 9, 1961) were NOT his ONLY lineal descendants, -- that would have provided a "per stirpes" distribution, as per the will.

(*Please Note*) If the Court had NOT fictitiously ASSUMED that he DIED on June 9, 1961, — that would have provided for a "per stirpes" distribution, as per the will.

OBVIOUSLY — THE ONLY THING WRONG IS THE SUBSTITUTED DEATH DATE which the Supreme Judicial Court of Maine UNCONSTITUTIONALLY AND fictitiously SUPPLIED.

The testator or his attorney, never could have anticipated or intended such "special privilege". — The "Judicial" Court never should have "trespassed" upon the long established PUBLIC POLICY and the MANDATE of the statute, created by the LEGISLATIVE Branch of Maine government. (for all Maine citizens alike). Anyone can see that the Court's interpretation of this STATUTE is NOT in strict conformity with the long existing laws of the State of Maine and of the United States.

FOR it is axiomatic that where a WILL, — CAN BE READ in strict conformity with its terms, the Courts have no authority to resort to artificial, "fictitious" means (such as advancing a Maine citizen's death date (43) years) to effectuate an ASSUMED intent for a testator.

OBVIOUSLY the RULING is UNCONSTITUTIONAL and VOID!

THE OPINION OF THE COURT

(*Please Note:*) This petition may be quickly understood, by quoting and considering part of, THE OPINION OF THE SUPREME JUDICIAL COURT OF MAINE.

March 23, 1962
(158 Me. 98)

Edward P. Murray
v.
Jane Murphy Sullivan et al

Before WEBBER, TAPLEY, SULLIVAN, DUBORD AND SIDDALL, JJ. WEBBER, Justice — (quote)

"On report. By his will executed on February 21, 1906, the late John Cassidy first created a trust for the benefit of his five children and their lineal descendants which should endure until the death of the last surviving child. He then disposed of the REMAINDER of his estate in these terms:"

"Upon the termination of this Trust, as aforesaid, namely, after the decease of all of my said *five* named children, all my estate in whatever form the estate shall then be, shall then vest in and become the property of *all* of my lineal descendants, if any, then living, in the same manner and in the same proportions as shall then be *provided* by the then existing laws of the State of Maine for the *descent* among lineal descendants of intestate property, real and personal."

"The testator died on March 25, 1918, leaving no widow and survived by four of his children, James, Mary, John F. and Lucy, and a grandchild, Edythe Rice Dyer. The latter is the only child of the testator's daughter Rosella who had predeceased her father on May 25, 1915. The trust terminated upon the death of Lucy on June 9, 1961. The lineal descendants of the testator, in the nearest degree then comprised the six

grandchildren who are claimants here, the said Edythe Rice Dyer, Jane Murphy Sullivan, only child of Mary, and Roselle M. Flynn, Joan Stetson, Barbara Anne Cassidy and John Cassidy III, the last four being the children of John F. Cassidy."

"The applicable statute, incorporated by reference into the Will, is R.S. 1954, Ch. 170, Sec. 1, Subsec. II which provides:

> "II. The REMAINDER of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation. *If no child is living at the time of his death,* to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation."
> (Emphasis added)

"The parties agree that the six grandchildren are the persons to whom the TRUSTEE *must distribute* the corpus of the estate in the discharge of the responsibilities imposed upon him by the *will.* They agree that the plaintiff trustee requires the guidance of the Court in making final distribution. They disagree only as to the size of the share each claimant should receive. Mrs. Sullivan and Mrs. Dyer, hereinafter called for convenience the proponents, contend that since the testator had children living at his death, the first sentence of the quoted portion of the statute is controlling and that the grandchildren should take as the 'lawful issue of a deceased child by right of representation'. In short, the two proponents would each take one-third while the four oppo-

nents would each take one-twelfth. — (the opponents assert that the statute should be applied as of the moment *immediately following* the *death* of the *last surviving child* so that by application of the *second sentence* of the quoted portion of the statute each grandchild would take per capita one-sixth of the REMAINDER." (Emphasis added)

(*Please note the last sentence:*) — The Court agreed: — The UNDISTRIBUTED REMAINDER — vested at the DEATH of the LAST CHILD.

The Maine law court agreed with the opponents and applied the Statute AS THOUGH, — the testator DIED on June 9, 1961. It did so, REGARDLESS of the FACT, that the first and second sentences of the above quoted Statute, SPECIFICALLY "SAID" — DESCENT of INTESTATE PROPERTY MUST be by Right of Representation:

1. "If" a child is living; — and/or
2. The lawful ISSUE of a predeceased child; — (is living)
3. AT THE TIME OF HIS DEATH

Your Petitioner not only asserts that the first sentence is controlling, but also the second sentence, is equally clear.

The "whole" statute should have been used — but the Court OMITTED the first part, — and SUBSTITUTED a "fictitious" "false" DEATH date into the second part, of the statute. AND THEN, — the Court construed what the statute 'said' — and how the will should be interpreted in such an instance: — AS THE CORRECT result which the statute MUST PROVIDE. (of course AS THOUGH he "NOW" died in 1961). — (Leaving a Remaining Undistributed estate!) (How far "out" can we go?)

ONLY a "per stirpes" distribution is possible, as provided by the will and/or the statute, — if the FALSE assumption that Mr. Cassidy "THEN DIED" — is omitted; — *ALL incongruity would be removed!*

(*Please Note:*) His children AND his children's children are ALL together, the STATUTORY LINEAL DESCENDANTS of his "FAMILY" — in one "line" from his body.

The INTESTATE laws of the State of Maine, WOULD NOT and COULD NOT — provide anything for his lineal descendants, "then" living (43) years after his death. — As the opponents and the Maine Law Court claim. (quote) NAMELY:

> "that *the Statute should be applied* as of *the moment immediately following* the *death* of *"the last surviving child;"* — SO THAT *by application* of the *second sentence* of the quoted portion of the statute, each grandchild would take per capita, one sixth of the remainder."
> (Emphasis added)

(*Please Note:*) the (SO THAT)?

How CONVENIENTLY — the court has "substituted" *the last childs death date* into the statute instead of Mr. Cassidy's. WE ALL KNOW the "pattern", the mandate of the statute, AND the LAW OF WILLS, — can only "speak" — from THE TIME OF DEATH, for any citizen. The time of death: — IS THE ONLY TIME — (according to the laws of Maine) —

1. that a family status is "fixed,"
2. that the degrees of kindred for all lineal descendants are FIXED.
3. that a deceased Maine citizen's ONLY "lineal descendants" can be legally determined.

Everyone knowing Mr. Cassidy's "family groups" — (of lineal descendants) refer to them as "aunts and uncles" "cousins", etc. — it is elementary and recognized public knowledge that their "degrees of kindred" were previously determined — at the true time of his death. (The last surviving child referred to as Lucy, — was publicly known as "Aunt" Lucille.

The descent statute COULD ONLY "PROVE", on (6-9-61) the degrees of kindred of all of his lineal descendants, who were and were NOT "living" at the time of his death.

Your petitioner asserts that the will intended for the estate to be "testate" at all times. That the TRUSTEE — NOT the statutory LAW; — was delegated to distribute his property. AND THAT, the statute COULD ONLY be utilized on June 9, 1961, in the WILL as a PATTERN for the "trustees" to follow; — in order to "then" determine and prove the STATUS and "degrees of kindred" — which established the "proportions" to be distributed to each and ALL lineal descendants, including his (after death) — (later born) descendants, (if any) in a blood line from his body — (or) his collateral descendants.

ALL of his descendants at the time of his death and his (new born) (after death) lineal descendants — who were admitted and limited to receive his estate; could ONLY be the ISSUE of his children's FAMILY GROUPS — and provided for (only) (exactly) as the statute provides for all Maine citizens "alike". (any other method is UNWORKABLE) — because there is no other law. Especially if the meaning and "the same manner" of the statute (which the will called for) could ONLY "then" be used as a "pattern" — to identify and PROVE the "degrees of kindred" — for all of his lineal descendants including the after (his death) born lineal descendants IN A TESTATE SITUATION.

His plain purpose was to "keep" his estate in his own blood line and next of kin.

(One thing is certain; —)

All of the king's horses, and all of the king's men, — cannot put Mr. Cassidy to DEATH AGAIN. (on 6-9-61) — not even the Maine Law Court.)

REGARDLESS of what the Maine Court has ruled; it is obvious that the testator's will requested the SAME "STATUTORY pattern" be applied by his trustees (quote)

"to carry out the provisions of the will" —

(SAME AS, — the law would have done if he had not requested the SAME) —

The laws of the State of Maine clearly provide that

I am the only ISSUE, of Mr. Cassidy's only child, who predeceased him with issue. —

I have the same Statutory family status, as one of Mr. Cassidy's children.

When the estate terminated, after the decease of his last surviving child: — (The Court ruled)

It would be "incongruous" to PERMIT the statute to operate as though one child was still living.

However the ISSUE of a "predeceased child" WAS then living. (Children are also "lineal descendants") as are the ISSUE of deceased children. If the court did not "permit" the statute to provide "naturally" for the ISSUE of the pre-deceased child — (as it admits) — then in effect, — it did not apply the statute as the court should have done for the ISSUE of a predeceased child — THEN LIVING!

At common law the share of one predeceasing the testator, (except in case of a joint interest) would LAPSE without words to that effect.

(Hay v Dole 119 Me 421)

To prove the correct answers in the Cassidy case; — only the fair honest answers are needed to the questions;

WHEN did Mr. Cassidy die?

WHAT is a "lineal" descendant?

WHAT did the Statute provide, — for WHOM?

HOW "could" or "would" — the statute vest "any other" Maine citizens intestate estate, — with a family status similar to Mr. Cassidy's?

What was the ONLY Survivorship date, which fixed (the degrees at kindred) and the (family status) — for all of Mr. Cassidy's descendants — if his estate was testate?

HOW — would the Laws of Maine distribute the previously UNDISTRIBUTED remainder of a testate estate? Especially when the testator requested his trustees to follow the "Same" provisions as the LAW would do — if he did not?

This same Maine Court recently ruled (for inheritance taxes) in (Stetson vs. Johnson 159 Me. 37) that: — quote "The date of the testators death (was) March 25, 1918."

Surely the laws of Maine do NOT apply (for any other citizen) as of the date of the death (of a last surviving child) — after a man has been dead (43) years. (There is no such provision).

If the Maine Court will not say that Mr. Cassidy died on June 9, 1961 — then it is absurd to apply the statute "as though" he DID 'then die".

(*Please Note:*) The Court should recognize his TRUE line of descent, as it "really EXISTS" — and admit that on 6-9-61, that his lineal descendants "then" living were NOT "ALL" of his lineal descendants (WHEN HE DIED). (the result could only be per stirpes).

ARGUMENT

Your petitioner EXPECTED the Maine Law Court "as per" the FACTS in the "Court Record" — to act upon the agreed FACT (that my grandfather died March 25, 1918) and NOT to act upon "a fictitious death date assumption" . . . . in direct contravention of the provisions of the Maine Descent Statute, which was incorporated by reference into the will of the said John Cassidy.

THAT: R.S. 1954, Ch. 170, Sec. 1, Sub. Sec. II and R.S. 1954, Chap. 10, Sec. 22, Sub. Sec. 1, establishes the rules which shall be observed in the construction of STATUTES.

("that words and phrases used in statutes shall be construed according to the Common Meaning" of the language.)

For Example: —

In construing the words and phrases used, the Court, has NOT followed or provided "the common meaning of the language".

The *statute* said, (quote) "if no child is living at the time of his DEATH" — The *Court* has construed the statute to mean, "if no child is living at the time of Mr. Cassidy's DISTRIBUTION — (this is "special privilege")

This MOTION, as outlined herein, "is logical" it comes to a practical, natural, legal conclusion, based upon FACTS. It proves that the court's ruling is not the "only way", or that the Court MUST "Reconstruct" the meaning of this Will and the STATUTE.

(*Please Note:*) If two constructions may be put upon a provision in a will, — one of which will violate an inflexible rule of law, — and the other not, the construction which will not offend the rule is to be adopted by the court. (Towle vs. Doe 97 Me. 433)

THEREFORE: If NO child was living *at the time*

of his death; means one thing. But if children and the ISSUE of a deceased child WERE living — at the time of his death — this by necessity must be the antithesis, of the premis; inherent in the court's decision.

It was not a question of what the law "then" provided (IF) he then died, but what the laws of Maine "provided" for the remnants of his (family groups) if he actually died being survived by children *at any time.* (as provided by the statute)

The Revised Statutes of Maine (1954) Vol. 4 - Page 665 - Chap. 170 - Sec. VIII: (quote) THE RIGHTS OF DESCENT FLOW FROM THE LEGAL STATUS OF THE PARTIES and where the status is fixed, the law supplies the rules of descent, with reference to the situation as it existed AT THE DEATH OF THE DESCENDANT. Getchell vs. Curtis 134 Me. 302; (186A 669) (Emphasis added)

(*Please Note:*) If the 1961 statute "could or would" provide for Mr. Casssidy's descendants — it would be according to his FIXED FAMILY STATUS.

OBVIOUSLY the testator's instructions to his trustees were plain and clear — the descent statute was not defective. If the trustee and the Court read the statute as part of his WILL (in the First Person singular) — the testator would be saying that no "fictitious death date" or construction was necessary to carry out his intentions.

The over emphasis of the word THEN is completely SUBROGATED by Mr. Cassidy's intention as to HOW the property shall "then" descend, to "his" surviving lineal descendants. (who were part of his original family).

(*Please Note:*) that — children and the ISSUE of predeceased children are BOTH "lineal descendants" and the statute DESCENDS property to each ALIKE. "ISSUE

is synonymous with lineal descendants." (Morse vs. Hayden 82 Me. 230)

"A relative can only be one whose descendants would also be relatives." (80 Me. at p. 294)

THEREFORE, it was not a question of what the laws "then" provided, (IF) he THEN died, but what the 1961 laws provided for the remnants of (family groups) — if any citizen actually died being survived by children, *at any time,* — and for "any reason" the residue or corpus of his estate was not disposed of, at the time of his death — by necessity the remainder had to be intestate.

It might be noted: That Mr. Cassidy did not require or authorize the Maine Court to NOW make a NEW WILL or to include in the new will, a NEW assumed DEATH date.

The Court also said: (quote)

"*Since he had called the statute into action* to deal with a situation which could only arise after his children had died, it would be incongruous to PERMIT the STATUTE to operate "as though" at least one child were still living".

He did NOT call the statute into action "AS" a MAN INTESTATE. "NOW" DEAD. (1961)

(*Please Note:*) The estate was NOT intestate; the testator did not NOW die; the estate "is" and has always been TESTATE; and, a WILL always speaks from the date of the death of the testator! (there is a difference)

The Court did not apply the statute, until (IT) — in effect artificially created a new unnecessary death date. ASSUMPTION — and then it said the STATUTE must be APPLIED, — in an ARTIFICIAL MANNER.

(quote)

"The Supreme Judicial Court of Maine has said:

'The statute MUST be applied "as though" the

> testator's death occurred immediately after the death of his last surviving child'." (43 years after he actually died) THIS WAS NOT "AS PROVIDED" by the LAWS OF MAINE, for all citizens, — who (in effect) do not dispose of all of their testate property. The Remainder in such cases is just as INTESTATE "as though" no will was ever written.

Note: Here the Court admits the statute MUST be applied; — and that it HAS applied the statute, — and that it has done so in an artificial "as though" manner, — AS THOUGH he THEN DIED.

The Court assumes that — the Testator could *only* have intended to distribute his property "AS THOUGH" he then died. (If the Court had omitted the assumption, we would NOT have a problem today.)

(*Please Note:*) This case is exactly to the point! (Quote the same Maine Court)

> "The question then is, whether these heirs shall take per capita or per stirpes, and the Court are of opinion, that according to the established rule of law a devise to "heirs" whether it be to ONES OWN HEIRS, OR TO THE HEIRS OF A THIRD PERSON, designates not only the persons who are to take but also the MANNER AND PROPORTIONS IN WHICH THEY ARE TO TAKE; and that, when there are no words to control the presumption of the will of the testator, the law presumes his intention to be, that they shall take as heirs would take by the RULES OF DESCENT. Therefore, in the present case, where there are no such words, the true construction of the will is, that the grandchildren take per stirpes and not per capita."

(Doherty vs. Grady 105 Me. 36 at page 44) — (Emphasis added) (72A. 869)

The ONLY difference between this case and the Cassidy case, — IS that Mr. Cassidy "REQUESTED" the SAME RULES of DESCENT be followed by his trustee.

Please also see — (Matthew Laughlin vs. Alonzo Page 108 Me. 317)

"It is the province of the legislature to make and establish laws and it is the province and duty of judges to expound and apply them." (Lewis vs. Webb 3 Me. 326)

In Hurd vs. Hodge (1948 334 US 24) The Supreme Court of the United States has indicated that "equal protection": is a part of the "public policy" of the United States.

In the plainest language, one can only ask: What did the laws of Maine (the 1961 laws) PROVIDE for the descent of "any man's" intestate property among descendants in a "line" from any deceased man. Not just Mr. Cassidy's descendants, but "any man's". What was the standard procedure? What was the manner, the style, the method, the FAMILY status which "any other" man's estate would be allowed? Answer: same as: — (Mr. Cassidy directed his trustees to follow) — To dispose of his estate — same as the law would do — if he did not!

The whole trouble with assuming things, — is something like lying; — one false assumption leads to another and another, and the whole pattern of thought becomes frustrated circular thinking.

The reason this case is difficult to understand is because the Maine Court (has in effect) (with construction) "created" TESTATE INTENTION — via: (a false death date)

If he "then" died or intended to "then" die is one consideration. But if he did not "then die" — and in the

absence of any such INTENTION, — the TRUTH of the case can only be found in the standard pattern of the Statute.

The STATUTE could not be — "suspended", construed, limited, altered, given an assumed intention, or given a new, different survivorship date, or basis. The statute fixes its own rules, and by these rules we must be governed. (Messer vs. Jones 88 Me. 353) (67 Me. 583)

If the Maine Descent Statute is used or "COPIED" it must be applied as it was meant to be used, NATURALLY.

(*Special Note:*) The Court cannot say that the intent of the testator was not synonymous with the "standard" provisions and intent of the Maine Legislature's Descent Statute, as provided for all citizens. THEREFORE — any construction by the Maine Law Court, *was out of order*, if the will and the statute were "IN ORDER". I ask — what is wrong?

(*Please Note:*) The testator specified that his property should "descend" — to ALL of his lineal descendants. If there is any doubt about the descendants "degrees of kindred" — your petitioner asks, — (with proof) — as to HOW and to WHOM the descendants estates would "ASCEND," — if such a contingency had occurred.

(*Please Note:*) (The Revised Statutes of Maine — Chap. 170, p. 666, Sec. 11) How Degrees of Kindred Computed: — (quote)

> "In the mode of computing the degrees of consanguinity, the civil law, which is generally followed in this country upon that point, begins with the "intestate" and ASCENDS from him to a common ancestor and DESCENDS from that ancestor to the next heir, — reckoning a degree for each person as well in the ASCENDING as

descending LINES." (Cables v. Prescott 67 Me. 582) (Emphasis added)

(*Please Note:*) The statute fixes its own rules, and by these rules we must be governed. (Messer v. Jones 88 Me. 353) (45 Me. 115)

OBVIOUSLY, the facts herein are so plain and simple and unconstitutional, — and I have protested them so long, — that it is embarrassing for me to again write such a petition to the Supreme Court.

However, no doubt you know by now that I firmly believe these statements. I am really not ashamed to strive for what I believe. Therefore, if there is any "fairness" under "LAW", I request to be allowed a formal review, even at this late date. Because these facts have deserved an answer *from the beginning* and the Court's indifference has meant only inaction, (not a last full fair day in court) — for your petitioner.

IN CONCLUSION

OBVIOUSLY the testator's only FINAL INTENTION was — to "NOW" distribute his previously UNDISTRIBUTED estate "SAME AS" the LAWS of Maine would DO; — if he did not do so.

HIS TESTATE WAY, — WAS THE SAME WAY as the LAWS of MAINE — provided — for "previously undistributed estates. (Which was INTESTATE as of the true date of his death)

(*Please Consider:*) The first line of the "applicable statute" — (quote): —

"THE REMAINDER of which he died seized."

There can be NO doubt that the descent statute is referring to a REMAINDER which has NOT been disposed of in a WILL.

There can be NO doubt that the Maine citizen referred

to in the statute has DIED — not disposing of his estate, (or) ALL of his estate.

(*Please Note:*) The Maine Court said (quote) (Referring to Mr. Cassidy) "He THEN disposed of the REMAINDER of his estate," —

OBVIOUSLY —

The testator ADOPTED the SAME PATTERN, — of the SAME LAW — (for his TRUSTEES to follow, to distribute his estate) — AS THE SAME LAW WOULD FOLLOW — to DISTRIBUTE HIS — (previously undistributed) — IF HE DID NOT DO SO — IN A TESTATE MANNER. — BOTH OF WHICH METHODS, are ONE and the SAME.

THE PARADOX BEING

That while this estate was NOT INTESTATE: — the REMAINDER of this TESTATE estate was finally disposed of, in the same manner and proportions as the laws of Maine would provide: — "IF" it was "UNDISPOSED" of PROPERTY, of a TESTATOR.

PLEASE NOTE

Obviously: ALL of the Remainder of his "NOW" estate can only vest in the "remainder" of his (referred to children's) "family groups". SAME AS THOUGH it was undisposed of INTESTATE property, OBVIOUSLY the testator INTENDED — for His TRUSTEES to distribute his testate estate — because he said (quote): —

> "MY TRUSTEES for the time then being shall make all conveyances and transfers, to carry out the provisions of the WILL as specified".

OBVIOUSLY, the TRUSTEES HAD (2) TWO final specific duties

1. to provide in a TESTATE manner for HIS LINE descendants. by "copying" the laws of Maine — for

the descent of UNDISTRIBUTED PROPERTY.

2. to THEN provide "SAME AS" Maine law "would and could", THEN DO for ANY Maine citizen's "line" descendants (on June 9, 1961) — 'if any", — (then living) in the same Manner — as the LAW would (then) distribute the UNDISPOSED part of any Maine man's estate, — if he did not do so.

THE IMPORTANT POINT which I cannot seem to get the Maine Court to understand, — and which the Court REFUSES to REVIEW: —

IS; — that MAINE LAW — is not now distributing this "testate" estate

1. "as though" Mr. Cassidy is now INTESTATE — (or)
2. "as though" he is NOW DEAD. — (we all know he died March 25, 1918).

IS; — that the MAINE LAW for "undistributed" property (on June 9, 1961) WAS — the "pattern" — Mr. Cassidy's trustees were directed to "Copy" and "Follow" — in the same manner and proportions: — as the LAW WOULD — DO — FOR any Maine citizen's property who "PREVIOUSLY DIED" and who DID NOT PREVIOUSLY — (AT THE TRUE TIME of HIS DEATH) DISTRIBUTE ALL of His property to ALL of His descendants.

In Brief: In the plainest language — IT IS CLEAR — that it was UNNECESSARY for the court to Assume a Fictitious death date to finally distribute the remainder of this (previously undistributed estate). THE FATAL ERROR — is OBVIOUS; when we realize that — in order to distribute the "remainder" of a TESTATE estate — that was PREVIOUSLY undisposed of "presupposes" a prior death date.

And that the court's artificial death date is not only UNNECESSARY AND WRONG — it NOT ONLY voids the testator's intention; — it voids the only manner of the

Statute — which requires the prior date of death, to fix the degrees of kindred to legally dispose of "THE REMAINDER" OF PREVIOUSLY UNDISPOSED TESTATE PROPERTY; — which is NOW (on June 9, 1961) INTESTATE, — as of the testator's TRUE date of death.

IF the same law — "presupposes" a prior death date; — the court's ("as though" he NOW DIED) death date — is not only "fictitious", — and "unworkable" it voids — the very premis on which the laws of Maine, — would distribute a part of a dead man's estate as undistributed INTESTATE property.

Of course the WILL DID provide; — it provided the "SAME AS" the LAW would do, if he HAD NOT DONE SO!

Therefore it is IMPOSSIBLE for the Court or anyone else to say that this testate estate is anything but "Same As" INTESTATE. — as of the testator's TRUE date of death.

Any other assumption is HYPOCRITICAL and ABSURD. — It is just not LOGICAL — or FACT or TRUTH!

(What else can your petitioner rely upon?)

And that the testator's trustees were instructed (in the will) (please see page #12-13 of the Court Record) (quote)

> "My Trustees under this Will, and their successors shall at ALL TIMES have FULL power and authority, etc., etc. — to be CONVEYED BY THEM, — to the proper parties AT THE TERMINATION OF THIS TRUST, as hereinafter specified." (Emphasis added).

(*Please Note:*) Here is written proof, that the testator did NOT intend for his estate to be "then" INTESTATE "as though" — he is "NOW" DEAD.)

One of the critical TRUTHS automatically and

obviously resolves itself into whether "ALL" of Mr. Cassidy's lineal descendants "(IF any, then living)" were actually ALL of Mr. Cassidy's lineal descendants (WHEN HE DIED)?

IT MAKES NO DIFFERENCE if the estate is testate or intestate according to the provisions of the descent statute (at any time or date) IF A TRUE DEATH DATE IS ALLOWED, — by the court.

Your petitioner can only be, one of "ALL" of Mr. Cassidy's lineal descendants — WHEN HE DIED (and qualifies as the Statute specifies)

The Maine Court — HAS given a different meaning to the Maine descent statute — than would apply to ANY OTHER MAINE CITIZEN'S — lineal descendants (with a similar fixed family status)

The decision of the Supreme Judicial Court of Maine has overturned the law of Maine, — existing from the date of Maine's entrance into the Union, — and deprived me of my Equal Rights and Due Process of the laws of Maine. (contrary to the "public policy" and the mandate of the descent statute).

(*Please Note:*) The Will can be read with clarity without construction! And reasonable logical interpretation is available!

I say — (AS THOUGH) he died on March 25, 1918 which is the TRUTH. The court said: — (AS THOUGH) he died on June 9, 1961 — which is argumentative, arbitrary, unreasonable, discriminatory, contrary to public policy and unapplicable to Mr. Cassidy (as per) the "provisions" of the 1961 laws of Maine.

I say the Testator requested — INTESTATE distribution AS THOUGH he did not finally dispose of all of his estate. The Court says: (as though) HE NOW DIED!

It is the duty of the Maine Court, and the United States Supreme Court to sustain the Maine Legislature, — (if any reasonable state of facts can be conceived.) (State v. King 135 Me. 16) (293 US 194).

PLEASE NOTE :

1. Two separate branches of the government of the State of Maine, are in conflict, — the "judicial" branch has trespassed upon the "legislative".
2. the court did not say; —- or follow what the statute "SAID". Similar "unworkable" law, — has just been reported in the Bangor Daily News, on October 17, 1964. (quote)

"The Maine Supreme Court, Friday ordered Myron A. Millett, Jr. — 32, of Freeport, released from prison saying he:

"was unmistakenly tried and convicted of a violation of a criminal statute which by its very terms did not apply to him but expressly immunized him."

"The ruling, written by Justice Francis W. Sullivan, said the court wasn't deciding what the legislature meant *but the meaning of what it said.*"

A similar situation exists in this Cassidy case. The court has not only "legislated" a new death date meaning — it has applied the descent statute in a different manner than its STANDARD pattern, which reverses its meaning".

How can a statute be legally applied "as provided by the laws of the State of Maine; — at any time, when its meaning, and purpose is obviously perverted, by omissions, assumptions and substitutions, which destroy its checks, balances and primary fixed public policy as to WHEN and HOW a class is "fixed"; and the "degrees of kindred" are established and the system of disposing of undistributed

remainders as INTESTATE property, is VOIDED. Has the Maine Court endeavored with conjecture to UNFIX the manner and legal system for the descent of Mr. Cassidy's "family groups" — and to THEN effectuate the statute? What has happened to the "fixed" manner, the substantial public policy and purpose, for which this statute was created, for "all" Maine citizens? — IT HAS BEEN REVERSED! — By a "Judicial" assumption.

There is no law that should prevent giving a man's plain testementary intention effect. (many cases). This testator never could have intended, or expected, the "special privilege" — of (as though) fictitiously dying on June 9, 1961. — (as provided by the Court).

I ask, has the Court acted arbitrarily, so as to accord discrimination into the application and operation of the laws of Maine? If so its ruling in this case cannot stand against the Fourteenth Amendment.

The Court has rested its "thin" decision upon arbitrary conjecture and "fiction" — NOT FACT.

CONSTITUTIONAL PROVISIONS

Amendment XIV: — "nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Your petitioner EXPECTED The Maine Law Court "as per the agreed facts, in the Court Record, — to act in a Constitutional manner upon the agreed FACT, that my grandfather died on March 25, 1918, — (and not in effect to substitute a fictitious death date assumption.) (OR, deprive me of my STATUTORY "family status" as a "direct immediate lineal descendant".

Your petitioner expected the Maine Law Court to CONSIDER these Constitutional rights when the case was

presented to the Court, — The Court has NOT ruled upon these rights, AND it "declines" to rule upon my rights.

The principle upon which liberty is based is equality under the law of the land. (133 Me. 472) (165 US 578-589) (262 US 390).

(*Please Note:*) The Supreme Court of the U.S. — on appeal or errors will take judicial notice of the general or public statutes of the several states — *without their being specifically pleaded* (59 C.J. p. 1197) (120 US 747) (103 US 477) (106 F.815) (many cases). It is not necessary to plead the law or refer to the law. (248F 345) (278F552).

The 14th Amendment does not prevent reasonable classification as long as all within a class are treated alike. The liberty guaranteed is not freedom from all restraints, but from restrictions which are without reasonable relations to a proper purpose and are unjustly arbitrary and discriminatory. Miller vs. Wilson 236 US 373 (133 Me. 472).

The real object of the statute must appear, upon inspection to have a reasonable connection with the welfare of the public. (133 Me. 172)

(*Please Note:*) The 14th Amendment *prohibits a state* denying "to any person within its jurisdiction the equal protection of the laws." The words seem so plain as to exclude the need of refinements in interpretation. Thought prohibitory, they contain a necessary implication of a positive right, — the right to an equality before every law, the right of the citizen to be free in any state, from unjust discrimination between him and other persons, as to legal rights and duties. Such is the plain meaning of the amendment (100 US. 303) (State v. Cohen 133 Me. 300).

All men under the same conditions have the same rights (State vs. King 135 Me. 18).

What is called "class legislation" would be obnoxious

to the prohibitions of the 14th Amendment. (109 US. 3-24) (State of Maine vs Old Tavery 133 Me. 468).

It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competancy of the courts to arbitrate in such contrariety. (240 US 342) (135 Me. 28).

A will is not a will until a testator is dead. A testator can only have lineal descendants, — once. A will dates from the date of the death of the testator. (and supplies the date of Survivorship)

Where the language of a statute is plain and unambiguous, there is no occasion for construction 59CJ-P. 953 (many cases). The statute must be given effect according to its plain and obvious meaning (129 Me. 178). And which most nearly conforms to the statute of distributions (27A77) (28A537)

The purpose of the equal protection clause of the 14th Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a *statute* or by its *improper execution* through duly *constituted agents*. (State v. King 135 Me. 16)

FROM THE BEGINNING

The Maine Judicial Court, by omission, severance and assumption, has caused the Maine descent statute to create a 'new class' of lineal descendants, for a man whose "FAMILY STATUS" was "fixed" — as of the date of his death — (by the Will) and — (by the statute) if it is applied, as provided by the LAWS OF MAINE. (Doherty vs. Grady 105 Me. 36) (72 A. 869)

FROM THE BEGINNING, when the Maine Court first rendered its decision, — the foundation for its premise and its ruling has been unconstitutional. Unconstitutional

law is NO law, (ab initio). — TODAY this case is just as wrong as it was the day of the courts ruling.

PLEASE ACCEPT, the enclosed — "other" — material to complete the Court's record.

The enclosed petition dated July 25, 1964, I sent to the Maine Supreme Court, stating that I intended to send it to the Supreme Court of the U.S.

The enclosed and attached petitions and amendments are exact copies of my pro se efforts to persuade the Maine Law Court — to allow a review of this case. They speak for themselves.

The enclosed copy of a letter received from Justice Tapley, Associate Justice of the Supreme Judicial Court of Maine, on October 10th, 1964, "apparently" again "technically" declines my requests for a review, or explanations, or constitutional consideration, — only because my "TRUE premise" — is repetitious.

It is not difficult for me to understand the dilemma of the Negro race, — discrimination, is discrimination, — and a rose is a rose, — by any name!

If there is such a thing as equitable justice — surely (in fairness) I should be allowed my RIGHTS under Maine law and my last day in court, to contest the very substantial damage and "trespass" which the "Judicial" branch of Maine government has caused to be done to my property rights.

The material at hand and previously submitted should justify "reasonable doubt", — for Certiorari.

The estate has not been fully distributed, or finally probated to date. I swear that this petition is not made to delay or for any other ulterior motive, except to obtain my fair, and legal share of my grandfather's estate which he provided for me, — as per his will, and as provided by the

SAME laws of the State of Maine, — which apply to ALL Maine citizens, alike.

IF logic, — truth and fact, — have meaning, I only ask for equitable justice and other relief which this Honorable Court believes to be fair and right.

Respectfully submitted,

EDYTHE RICE DYER
petitioner pro se
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